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10 UNITED STATES OF AMERICA,) Case No. 08CR1003-WQH
11 Plaintiff,) DATE: July 21, 2008
12 v.) TIME: 2:00 p.m.
13 LUIS GOMEZ-DOMINGUEZ,) STATEMENT OF FACTS AND
14 Defendant.) MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTIONS

L.

STATEMENT OF FACTS

18 The following statement of facts is based on materials received from the government. Mr. Gomez
19 does not accept this statement of facts as his own, and reserves the right to take a contrary position at motion
20 hearings and trial. The facts alleged in these motions are subject to amplification and/or modification at the
21 time these motions are heard.

On March 4, 2008, Mr. Gomez was arrested by Border Patrol agents. He was questioned by Border Patrol Agent Bean at Imperial Beach Border Patrol station.

These motions follow.

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1 **II.**2 **MOTION TO SUPPRESS STATEMENTS**

3 Mr. Gomez moves to suppress his statements on the grounds of an invalid Miranda waiver and
 4 voluntariness.

5 **A. The Government Must Demonstrate Compliance with Miranda.**

6 In order for any statements made by Mr. Gomez to be admissible against him, the government must
 7 demonstrate that they were obtained in compliance with the Miranda decision. The government must establish
 8 that Mr. Gomez's waiver of his Miranda rights was voluntary, knowing, and intelligent. See Schneckloth v.
 9 Bustamonte, 412 U.S. 218 (1973). When interrogation continues without the presence of an attorney, and
 10 a statement results, the government has a heavy burden to demonstrate that the defendant has intelligently
 11 and voluntarily waived his privilege against self-incrimination. Miranda, 384 U.S. at 475. The court must
 12 indulge every reasonable presumption against waiver of fundamental constitutional rights, so the burden on
 13 the government is great. United States v. Heldt, 745 F. 2d 1275, 1277 (9th Cir. 1984).

14 In determining whether a waiver is voluntary, knowing, and intelligent, the court looks to the totality
 15 of the circumstances surrounding the case. Edwards v. Arizona, 451 U.S. 477 (1981); United States v.
 16 Garibay, 143 F.3d 534 (9th Cir. 1998). The Ninth Circuit has held that determination of the validity of a
 17 Miranda waiver requires a two prong analysis: the waiver must be both (1) voluntary and (2) knowing and
 18 intelligent. Derrick v. Peterson, 924 F. 2d 813 (9th Cir. 1990). The second prong requires an inquiry into
 19 whether "the waiver [was] made with a full awareness both of the nature of the right being abandoned and
 20 the consequences of the decision to abandon it." Id. at 820-821 (quoting Colorado v. Spring, 479 U.S. 564,
 21 573 (1987)). Not only must the waiver be uncoerced, then, it must also involve a "requisite level of
 22 comprehension" before a court may conclude that Miranda rights have been legitimately waived. Id. (quoting
 23 Colorado v. Spring, 479 U.S. at 573). Unless and until Miranda warnings and a knowing and intelligent
 24 waiver are demonstrated by the prosecution, no evidence obtained as a result of the interrogation can be used
 25 against the defendant. Miranda, 384 U.S. at 479. The government in this case must prove that Mr. Gomez
 26 waived his rights intelligently and voluntarily. Mr. Gomez disputes any allegation of any waiver was
 27 knowing, intelligent, and voluntarily.

1 B. Mr. Gomez's Waiver was neither knowing nor intelligent because he did not understand his rights

3 Mr. Gomez did not understand that he had right to a criminal attorney. Declaration of L. Gomez
4 (Exhibit A). Rather he believed he had the right to an immigration attorney. *Id.* This is understandable since
5 references to the two systems are woven throughout Agent Bean's advisement.

6 "Anything that you say can be used against you in a court of law or in any administrative or
7 immigration proceeding." Transcript of post-arrest statement (Exhibit B) at 3. Also, Mr. Gomez is advised
8 of his consular rights, see id. at 2, and he is informed that he is arrested for illegally re-entering while not
9 being a citizen. See id. The point is that Agent Bean's advisement covers international law, immigration law
10 and criminal law. Agent Bean himself is an agent that in large part enforces immigration policies. It is
11 understandable that an uneducated twenty-year-old would be confused. An obvious response is that
12 Mr. Gomez is alleged to have a prior §1326 conviction and should understand the criminality of these events.
13 Yet, Mr. Gomez's criminal experience (allegedly) occurred in downtown San Diego in an arena that is distinct
14 geographically, cosmetically, and professionally from the border patrol station near the hills of Imperial
15 Beach.

16 Because Mr. Gomez did not understand his right to have a criminal attorney assist him, his waiver
17 was not knowing, not intelligent, and thus not valid. Therefore, all of the subsequent statements must be
18 suppressed.

III.

REQUEST FOR LEAVE TO FILE FURTHER MOTIONS

21 Mr. Gomez has not received the audio cassette from the alleged deportation, nor has he viewed the
22 A-File. After he does, Mr. Gomez will need to file additional motions accordingly. He requests leave to do
23 so.

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1 **IV.**

2 **CONCLUSION**

3 For the foregoing reasons, Mr. Gomez respectfully requests this Court to grant the above motions.

4 Respectfully submitted,

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6 DATED: July 2, 2008

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